

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2011-092848

05/03/2012

HONORABLE BOYD W. DUNN

CLERK OF THE COURT

C. Towles

Deputy

IN RE THE MARRIAGE OF  
ELIZABETH ANNE FAIR

ELIZABETH ANNE FAIR  
10210 E CALYPSO AVE  
MESA AZ 85208

AND

IRA FAIR

IRA FAIR  
714 S JONES  
MESA AZ 85204

DOCKET-FAMILY COURT-SE  
FAMILY COURT SERVICES-CCC

**DECREE OF DISSOLUTION OF MARRIAGE**

The Evidentiary Hearing in this matter was conducted on March 7, 2012. During the proceedings, the Court heard from the witnesses, including the parties. The Court has since considered the evidence, including the demeanor of the witnesses, reviewed the exhibits as well as the case history, and considered the parties' arguments.

After significant deliberation, the Court makes the following findings and enters the following orders:

**THE COURT FINDS** as follows:

- A. At the time this action was commenced at least one of the parties was domiciled in the State of Arizona and that said domicile had been maintained for at least 90 days prior to the filing of the Petition for Dissolution of Marriage.

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- B. The conciliation provisions of A.R.S. § 25-381.09 have either been met or do not apply.
- C. The parties were married on February 21, 1998. By operation of law, the marital community is deemed to have terminated on June 9, 2011.
- D. The marriage is irretrievably broken and there is no reasonable prospect for reconciliation.
- E. There are four (4) minor children common to the parties, namely: Dallas Fair (DOB: 07/06/1998), William Fair, (DOB: 10/28/2002), Windell Fair (DOB: 04/28/04), and Sunday Fair (DOB: 11/10/07).
- F. Mother is not pregnant.
- G. This was not a covenant marriage.
- H. To the extent that it has jurisdiction to do so, the court has considered, approved and made provision for the maintenance of each spouse and the division of property and debts.

**DISSOLUTION OF MARRIAGE**

**IT IS ORDERED** dissolving the marriage of the parties and restoring each party to the status of a single person.

**IMPACT OF PENDING BANKRUPTCY**

As a result of Petitioner/Mother's filing for bankruptcy, this Court has no jurisdiction to address issues related to the parties' property. This Court, nonetheless, may move forward with the other issues before it, including the final dissolution of the parties' marriage.

**Jurisdictional Impact**

Once a party to a dissolution action files a bankruptcy, the federal bankruptcy court has "exclusive jurisdiction" over the bankruptcy estate. *See* 28 U.S.C. § 1334(e) (giving district court "exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of [the] case, and of property of the estate."). The bankruptcy estate includes any potential community property and debt. Therefore, the court that is hearing the parties' dissolution action may not resolve the distribution of the parties' property and debt.

A court, however, does not lose jurisdiction over all matters. *See* 11 U.S.C. § 362(b). Section 362(b) provides that the filing of a bankruptcy "does not operate as a stay (2)(A) of the commencement or continuation of a civil action or proceeding (i) for the establishment of paternity; (ii) for the establishment or modification of an order for domestic support obligations;

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(iii) concerning child custody or visitation; (iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate or (v) regarding domestic violence.” This Court also may enter order to allow for the collection or withholding of income for support obligations. *See* 11 USC § 362(b)(2)(B-C).

**Entry of Decree**

This Court may not bifurcate a dissolution action. *See* A.R.S. § 25-312(4) (providing that the court may not enter a decree of dissolution unless it makes certain findings, including “[t]o the extent it has jurisdiction to do so, the court has . . . made provision for . . . the disposition of property.”); *see also Porter v. Estate of Pigg*, 175 Ariz. 194, 196, 854 P.2d 1180, 1182 (Ct. App. Div. 1993) (clarifying that a final decree that does not resolve property issues to the extent the court has jurisdiction to do so is voidable by direct appeal).

This Court, nonetheless, may proceed with the dissolution of the marriage and enter a final decree without further action on the property and debt because at this point, the Court has no jurisdiction over the property and debt. By not entering further orders with regard to the property and debt, “[t]o the extent it has jurisdiction to do so, the court has . . . made provision for . . . the disposition of property.” *See* A.R.S. § 25-312(4).

The Court finds nothing in Arizona law that requires the Court to delay the entry of a final decree merely because at some point in the future, the Court may acquire jurisdiction over an issue. Instead, the Court may enter a decree dissolving the marriage under the following circumstances:

- A court may dissolve a marriage and not address child custody, parenting time, and child support if another court has jurisdiction over the children as the children’s home state.
- A court may dissolve a marriage without dividing personal property or entering orders regarding spousal maintenance if the court does not have personal jurisdiction over both spouses.
- A court may dissolve a marriage when service of process has been secured by publication, even though the court may not determine issues of paternity, child support, spousal maintenance, division of marital property, or any other issue requiring personal jurisdiction over a party.

In each of the above instances, a court may later acquire jurisdiction to resolve the matters, but the Court need not delay entry of the decree.

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Arizona law recognizes that a court may dispose of the parties' property and debt in a later proceeding if the court "previously lacked jurisdiction over the parties' property and debt." *See* A.R.S. § 25-318(A). Section 25-318(A) is consistent with and supports this Court's ruling. Section 25-318(A) states, "In a proceeding for disposition of property following dissolution of the marriage by a court which previously lacked . . . jurisdiction to dispose of the property . . ."

Therefore, this Court may enter a final decree without addressing and resolving the distribution of the parties' property and debts over which this Court has no jurisdiction.

**CUSTODY AND PARENTING TIME**

**Jurisdictional Findings**

**THE COURT FINDS** that Mother and Father have four (4) minor children in common: Dallas Fair (DOB: 07/06/1998), William Fair, (DOB: 10/28/2002), Windell Fair (DOB: 04/28/04), and Sunday Fair (DOB: 11/10/07). The parties and the minor children have resided in Arizona continuously for at least the six months preceding the filing of the petition for dissolution. This Court, therefore, has jurisdiction as Arizona is the "home state" of the minor children. *See* A.R.S. § 25-1031.

**THE COURT FINDS** that the parties reached a full agreement for custody and parenting time concerning the minor children as evidenced by the written agreement by the parties on November 7, 2011, and previously filed with the Court.

**Best Interest Findings: A.R.S. § 25-403**

The Court has considered the agreement of the parties and the factors under A.R.S. § 25-403. The parties have stipulated to a finding that the agreed upon plan is in the best interests of the minor children.

**THE COURT FURTHER FINDS** that there is no history of domestic violence (A.R.S. § 25-403(E) and 25-403.03), any drug related offenses of either party (A.R.S. § 25-403.04) and any sexual offenses (A.R.S. § 25-403.05) sufficient to preclude the award of joint legal custody as agreed.

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**Legal Custody**

**IT IS ORDERED** that the provisions contained in the written and approved Full Agreement for Custody and Parenting Time approved by the parties on November 7, 2011 and adopted by this Court on November 9, 2011.

**Parenting Time**

**IT IS ORDERED**, in accordance with said agreement of the parties, Father shall have regular parenting every Saturday at 8:00 a.m. until Sunday at 9:00 p.m. The children shall be in the care of Mother at all other times.

Additionally, summer vacations and the holiday schedule concerning the minor children shall be divided by parties in accordance with the provisions of the parties' prior agreement and that such a division takes priority over the regular parenting time schedule.

**CHILD SUPPORT**

**THE COURT FINDS** that the relevant financial factors and the discretionary allowances and adjustments which the Court will allow for a current calculation of child support pursuant to the Arizona Child Support Guidelines are set forth in the Child Support Worksheet, which the Court hereby incorporates and adopts as its findings with respect to child support.

**IT IS THEREFORE ORDERED** that Father shall pay to Mother as and for child support the sum of \$1,127.44 per month, payable through the Support Payment Clearinghouse on the 1st day of each month commencing July 1, 2011, by Income Withholding Order.

**IT IS FURTHER ORDERED** that at any time an Income Withholding Order is not paying the child support obligation in full, Father shall make full and timely payments directly to the Support Payment Clearinghouse in accordance with the attached "Instructions for Making Support Payments through the Clearinghouse."

All payments shall be made through the Support Clearinghouse via an automatic Income Withholding Order issued this date. Father is advised that until such time as the Income Withholding Order becomes effective, Father has an affirmative obligation to pay the child support directly to the Support Clearinghouse.

All obligations for child support for each child shall terminate upon a finding of this Court that the child has attained the age of 18 years, or is otherwise emancipated. If any child

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attains the age of 18 years while attending high school, support shall continue to be provided during the period in which that child is actually attending high school but only until the child reaches 19 years of age. Support for special needs children may continue past the age of 18 based on a finding of this Court. Provisions for health insurance and non-insured health expenses for the children, as provided for below, shall be deemed to be additional child support and shall be enforceable as such.

Pursuant to A.R.S. § 25-503(I), the right of a parent, guardian or custodian to receive child support payments as provided in this Order vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law.

**Insurance and Unreimbursed Medical Expenses**

**IT IS ORDERED** that Father shall provide medical, dental and vision insurance for the benefit of the parties' minor child, and shall provide an insurance card and claim filing information/forms to the other parent. All medical, dental and orthodontia expenses incurred for the health and protection of the child not covered by insurance shall be paid 75% by Father and 25% by Mother.

**IT IS FURTHER ORDERED** that unless good cause is shown, any request for payment or reimbursement of uninsured medical, dental, and/or vision costs must be provided to the other parent within 180 days after the date the services occur. The parent responsible for payment or reimbursement must pay his or her share, as ordered by the Court, or make acceptable payment arrangements with the provider or person entitled to reimbursement within 45 days after receipt of the request.

Both parents must use their best efforts to obtain services that are covered by the insurance. A parent who is entitled to receive reimbursement from the other parent for medical costs not covered by insurance shall, upon request of the other parent, provide receipts or other evidence of payments actually made.

**Tax Deduction For Dependents**

**IT IS ORDERED** that Father shall be entitled to utilize the federal tax exemption applicable to the parties' three oldest children for all federal and state income tax purposes each year, commencing tax year 2012.

**IT IS FURTHER ORDERED** that Mother shall be entitled to utilize the federal tax exemption applicable to the parties' youngest child for all federal and state income tax purposes each year, commencing tax year 2012.

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**IT IS FURTHER ORDERED** that if Father is not current in the total Court-ordered child support obligation for the current calendar year and/or any Court-ordered arrearage payment due during the calendar year for which the exemption is to be claimed but nevertheless claims the children for tax purposes, Father shall pay directly to the Support Payment Clearinghouse 100 percent of any and all tax refunds that Father receives, which shall be applied first towards Father's current child support obligation, Father's current spousal maintenance obligation, and then towards any arrearage.

**Exchange Of Income Information**

**IT IS ORDERED** that the parties shall exchange income information every 24 months. Said financial information shall include, but not be limited to: personal tax returns with all schedules, affidavits of financial information, earning statements and other such documentation necessary to establish or prove the income of either party. In addition, at the time of the exchange of financial information, the parties shall also exchange residential addresses and the names and addresses of their respective employers.

**SPOUSAL MAINTENANCE**

Both parties agree that Mother shall receive spousal maintenance but they disagree on the amount and term thereof. At the time of trial, Mother requested \$1,500.00 per month in spousal maintenance for a term of five (5) years. Father proposes spousal maintenance of \$500.00-\$1,000.00 per month for one and a half (1 1/2) years and no more than \$1,500.00 in total spousal maintenance and child support.

Father is employed in a full-time basis as a pit supervisor for Casino Arizona earning base income at \$29.79 per hour. Father's 2011 taxable income amounted to \$63,470.00 or gross monthly income of \$5,289.17.

Mother has been a stay-at-home parent taking care of the parties four minor children ranging from 4 to 13 years of age; one preschool child remains. Mother has not been employed on a full-time basis for the last ten years. Most recently, Mother has had a part-time job working in the school cafeteria for twenty (20) hours per week earning \$8.50 per hour for the nine months of school.

**THE COURT FINDS** that the parties are in agreement that Mother requires an order of spousal maintenance based upon the fact that she is a caretaker of four children of a young age, including one preschool aged child, and that Mother does not have the capability of meeting her

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own living expenses based upon the lack of employment and training. Mother desires to obtain the necessary training in order to become gainfully employed in the future.

**THE COURT FURTHER FINDS** that Father is capable of paying spousal maintenance in the amount of \$900.00 per month for sixty (60) months.

**IT IS ORDERED** that effective as of July 1, 2011, Father shall pay Mother spousal maintenance in the amount of \$900.00 per month for sixty (60) months. The sixty (60) months will allow Mother the time she needs to secure additional employment and arrange for any training she needs to secure appropriate employment.

**LET THE RECORD REFLECT** the Income Withholding Order is initiated electronically by the above-named deputy clerk. Confirmation #372635.

**THE COURT FURTHER FINDS** that the spousal maintenance and child support owed for the period of time from July 1, 2011, through May 31, 2012, amounts to \$22,301.84. Father shall be granted credit based upon the assumed payment by Father of the temporary family support ordered by this Court on October 3, 2011, totaling \$8,000.00 for the months of October, 2011, through May 31, 2012. The net amount of arrearage equals \$14,301.84.

**IT IS ORDERED** that judgment is awarded to Mother and against Father in the amount of \$14,301.84 representing the spousal maintenance and child support arrearage due for the period of June 1, 2011, through May 31, 2012.

All spousal maintenance paid by Father to Mother shall be tax deductible for Father and shall be deemed income to Mother for income tax purposes. Further the award shall be modifiable as to amount and duration in accordance with A.R.S. § 25-327. It shall terminate upon the death or remarriage of Mother.

The spousal maintenance payments shall be made through the Support Clearinghouse by Income Withholding Order. Until it becomes effective, Father shall be responsible for ensuring that the payment is made through the Support Clearinghouse in a timely fashion.

**RESTORATION OF NAME**

Petitioner/Mother declined on the record to have her name restored.

**IT IS THEREFORE ORDERED** not restoring Petitioner/Mother to her former name.



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**ATTORNEY FEES AND COSTS**

Neither party at the time of trial requested or presented evidence with regard to an award of attorney's fees and costs in accordance to A.R.S. § 25-324.

**IT IS ORDERED** that each party shall pay his/her own attorney's fees and costs incurred in this action.

**IT IS FURTHER ORDERED** denying any affirmative relief sought before the date of this Order that is not expressly granted above.

**IT IS FURTHER ORDERED** signing this minute entry as a formal order of this Court pursuant to Rule 81, *Arizona Rules of Family Law Procedure*.

05/03/2012

/S/ HON. BOYD W. DUNN

\_\_\_\_\_  
Date

\_\_\_\_\_  
The Honorable Boyd W. Dunn  
Judge of the Superior Court

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.

Attachments:

IRA FAIR: Non IV-D Payment Instructions